

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

M.A.NOS.209 & 210 OF 2013 & O.A.NO.92 OF 2010

MONDAY, THE 3RD DAY OF JUNE, 2013/13TH JYAISHTA, 1935

CORAM:

HON'BLE MR. JUSTICE SHRI KANT TRIPATHI, MEMBER (J)
HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT :

K.S.RAMACHANDRA (AGED 45 years,NO.NIL, RANK:NIL)
S/o DR. K.R.SHAMAIAH, NO.54 & 55, "SHYAMLEELA", 14TH MAIN,
ABBIGERE MAIN TURN, JALAHALLI(W), K.G.HALLI,
BANGFALORE- 560 015.

PARTY IN PERSON.

VERSUS

RESPONDENT:

1. THE UNION OF INDIA, REPRESENTED BY
THE CHIEF SECRETARY, MINISTRY OF DEFENCE ,
GOVT. OF INDIA, SOUTH BLOCK, NEW DELHI- 110 001.
2. THE CHIEF OF ARMY STAFF (COAS),
ARMY HEADQUARTERS, SENA BHAVAN,
NEW DELHI – 110 001.
3. THE ADDL.DIRECTOR GENERAL,
TERRITORIAL ARMY, GS BRANCH,
INTEGRATED HQ OF MOD (ARMY),
'L' BLOCK, CHURCH ROAD,
NEW DELHI – 110 001.

BY ADV.SRI.K.M.JAMALUDHEEN, SENIOR PANEL COUNSEL

ORDER

SHRIKANT TRIPATHI, MEMBER(J)

1. Heard the applicant in person and Mr. K.M.Jamaludheen for the respondents on merit of the O.A. as also on the restoration application and perused the record.

2. The applicant has filed Miscellaneous Application No.210 of 2013 for recalling the dismissal order dated 26th February, 2013 and restoration of O.A.No.92 of 2010. He has further filed M.A.No.209 of 2013 for condonation of the delay in filing the restoration application.

3. The applicant was not present on 26th February, 2013. Consequently the O.A.was dismissed for want of prosecution with the observation that he was a civilian not subject to the Army Act, therefore, the Original Application for the direction to grant him regular commission in the Territorial Army was held not maintainable.

4. The applicant submitted that he had no notice of the aforesaid date, therefore, he failed to appear.

5. In our view, the applicant has shown sufficient cause not only for the

condonation of the delay but also for restoration of the O.A. Therefore, M.A.Nos.210 of 2013 and 209 of 2013 are allowed. The delay is condoned. The dismissal order dated 26th February, 2013 is recalled and O.A. No.92 of 2010 is restored to its original number.

6. The applicant has filed the instant O.A.for a direction to the Chief of the Army Staff for granting him honorary rank in the Territorial Army, Urban Unit , with effect from 19th December 2008 with all benefits as per Annexure A1.

7. It appears that the applicant moved the application dated 4th December, 2008 for granting him honorary rank in the Territorial Army. The letter was replied by Major General K.V.S.Lalotra, Addl.Director General, Territorial Army on 19th December, 2008 (vide Annexure A1) to the applicant in the following terms:-

“ 1. Please refer to your letter dated 04 December 2008 addressed to the Chief of the Army Staff.

2. The Chief of the Army Staff has read your letter and has appreciated your noble intent of making available your services to the Armed Forces.

3. He considered your doing so to be a very spirited gesture and assures you that when the situation arises your core competency will be called upon and not necessarily for combat services only. “

8. According to the applicant, excepting the aforesaid letter Annexure A1, there is no other document in support of his case. No doubt the applicant made several correspondences, but ultimately whatever he received, was the aforesaid letter Annexure A1.

9. The Territorial Army Act, 1948, hereinafter referred to as the Act, has been enacted to provide for the constitution of a Territorial Army. The term "Officer" has been defined in section 2 (b) of the Act, according to which, "Officer" means, an Officer of any of the two classes specified in Section 5. Section 2 (a) of the Act defines "enrolled", which means enrolled in the Territorial Army under the provisions of the Act. Section 5 of the Act describes the classes of the officers in the Territorial Army, according to which, there are following two classes of officers, namely:-

(a) Officers holding commissions in the Territorial Army granted by the President with designation of rank corresponding to those Indian commissioned officers of the regular army; and

(b) Junior commissioned officers holding commissions in the Territorial Army granted by the President with designation of rank corresponding to those of junior commissioned officers of the regular army.

10. Section 6 of the Act provides as to who is eligible for enrollment, according to which, any person who is a citizen of India may offer

himself for enrolment in the Territorial Army, and may, if he satisfies the prescribed conditions, be enrolled for such period and subject to such conditions as may be prescribed.

11. It is thus clear that a person claiming himself as an officer holding commission in the Territorial Army must prove that he was granted the commission by the President of India with designation of rank corresponding to those of the Indian commissioned officers in the regular army. Unless grant of such commission by the President of India is proved, no person can be treated as an Officer in the Territorial Army. Mere making of request to serve the Territorial Army or receipt of any reply to the request so made does not confer any right on the individual to claim himself as a commissioned officer in the Territorial Army.

12. It is true that no enrolment is required for officers in the Territorial Army, but grant of commission with designation of rank corresponding to those of Indian Commissioned Officers of the regular army, is not only necessary but is a condition precedent to treat him as a Commissioned Officer in the Territorial Army.

13. The letter dated 19th December 2008 (Annexure A1) discloses that the Chief of the Army Staff had merely appreciated the applicant's noble intent to make available his services to the Armed Forces. It was further communicated to the applicant that the Chief of the Army Staff considered the

applicant doing so to be a very spirited gesture and accordingly assured him that when the situation would arise his core competency will be called upon and not necessarily for combat services only.

14. In our view, the letter dated 19th December 2008 (Anexure A1) has nowhere granted any commission to the applicant in the Territorial Army. But merely appreciated his efforts and merely gave him assurance to consider the matter as and when occasion arises. Taking advantage of this reply, the applicant, instead of further pursuing the matter with the respondent No.1 approached the Armed Forces Tribunal for the aforesaid direction, which cannot be said to be maintainable. The applicant's prayer for a direction to the Chief of the Army Staff to grant him honorary rank in the Territorial Army cannot be entertained due to the simple reason that neither the Chief of the Army Staff nor the other respondents are under any legal obligation to grant any honorary commission to the applicant. The direction in the form of mandamus can only be claimed, if the claimant has a legal right for the claim. In view of the fact that the applicant has not yet been granted any commission in the Territorial Army, the question of issuing the aforesaid direction does not arise.

15. In view of the fact that the applicant is not a commissioned officer in the Territorial Army, he cannot be said to be subject to the Army Act, 1950. He could be held so, if, he had been a Commissioned Officer in the Territorial Army. As the applicant is not subject to the Army Act, the instant petition, in view of section 2 of the Armed Forces Tribunal Act, 2007 is not maintainable before the

Tribunal.

16. In view of the aforesaid, the Original Application has no merit and is dismissed.

17.. There will be no order as to costs.

18. Issue free copy of the order to both side.

Sd/-
LT.GEN.THOMAS MATHEW
MEMBER (A)

Sd/-
JUSTICE SHRIKANT TRIPATHI
MEMBER (J)

/True copy/

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